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United States General Accounting Office
Washington, DC 20548

March 16, 2001

The Honorable Joseph M. Hoeffel
House of Representatives

Subject: Brady Act Instant Background Check Is Not Applicable to Antique Firearms

Dear Mr. Hoeffel:

This letter provides you information we obtained concerning antique firearms during a recent investigation.¹ In the investigation, we purchased firearms, acting in an undercover capacity and using counterfeit identification, from federal firearm licensees (FFL) in five states that rely on the National Instant Criminal Background Check System, known as NICS. The Brady Handgun Violence Prevention Act of 1993² required the Attorney General of the United States to establish NICS.³ We conducted our undercover investigation at the request of Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform; and it is at his request that we are providing this information to you.

As you know, the Brady Act requirement for instant background checks pertains to prospective purchasers of firearms that were manufactured after 1898, i.e., firearms that are not considered antiques. Antique firearms, which include weapons manufactured before 1899, are not subject to NICS checks.⁴ At a gun store in Tucson, Arizona, one of our undercover agents used a counterfeit Arizona driver's license to purchase two firearms, including a Spanish-manufactured half-break .38 caliber 5-shot revolver, circa 1893. (See encl. I.) During the transaction, the salesperson acknowledged that the instant background check was not required on the revolver because it had been manufactured over 100 years ago, in approximately 1893, and was considered a "curio," or antique.

We subsequently asked the salespersons at another gun store in Tucson and at a gun store in Tombstone, Arizona, about their understanding of the applicability of the Brady Act requirement for instant background checks to antique firearms. They both

¹ The undercover investigation is discussed in an upcoming report: *Firearms: Purchased From Federal Firearm Licensees Using Bogus Identification* (GAO-01-427).

² 18 U.S.C. § 922(t).

³ Two recent GAO reports provide additional information about NICS: *Gun Control: Options for Improving the National Instant Criminal Background Check System* (GAO/GGD-00-56, Apr. 12, 2000) and *Gun Control: Implementation of the National Instant Criminal Background Check System* (GAO/GGD/AIMD-00-64, Feb. 29, 2000).

⁴ 18 U.S.C. § 921(a)(3) and 27 C.F.R. § 178.11.

acknowledged that antique weapons are not subject to NICS checks under the Brady Act. In Tombstone, the gun store salesperson told an undercover agent that he could purchase any of the numerous antique firearms on display without showing identification or doing any paperwork. The agent then said to the salesperson, "Let me see if I understand. I can buy any of these old revolvers, all of which look like they are in good condition, and buy the ammunition, without showing you any identification." The salesperson responded in the affirmative.

During our undercover operation at the gun stores in Tucson and Tombstone, we also observed various types of firearms for sale that were manufactured before 1899 and that are, therefore, exempt from the NICS check. These stores displayed antique rifles; .38, .44, and .45 caliber revolvers; and single- and double-shot derringers of various calibrations. Although many of the antique firearms were offered as collectibles with some priced in the thousands of dollars, many of the other antique firearms were priced between \$100 and \$300. We paid \$100 for the antique Spanish-manufactured 5-shot revolver. After the purchase, we test-fired the revolver and found it to be operable and in good condition.

We hope this information is responsive to your needs. If you have any questions, please call Assistant Director Patrick Sullivan at (202) 512-6722. Senior Special Agent John Cooney made key contributions to this investigation and letter. This letter will be sent to interested congressional committees and will also be available at GAO's home page, www.gao.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert H. Hast". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert H. Hast
Managing Director
Office of Special Investigations

Enclosure

Enclosure I

**Spanish-Manufactured Half-Break .38 Caliber 5-Shot Revolver
Circa 1893**



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